

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

J. Blazek SKLO Podebrady s.r.o. and
Mr. Dalibor Blazek,

Plaintiffs,

v.

Burton International Enterprises and
Monika-Burton d/b/a Burton International
Enterprises,

Defendants.

Case Number:

JURY TRIAL DEMANDED

Pat. # 6,488,034
6,694,988

COMPLAINT

Come now the Plaintiffs, J. Blazek SKLO Podebrady s.r.o. and Mr. Dalibor Blazek, for their Complaint against Defendants, Burton International Enterprises and Monika Burton d/b/a Burton International Enterprises, state and allege as follows:

THE PARTIES

1. Plaintiff J. Blazek SKLO Podebrady s.r.o. ("J. Blazek") is a business entity of the Czech Republic having a principal place of business at Olbrachtova 600, 290 01 Podebrady, Czech Republic.

2. Plaintiff Dalibor Blazek, is an individual with the legal address of Olbrachtova 600, 290 01 Podebrady, Czech Republic.

3. Upon information and belief, Defendant Burton International Enterprises ("Burton International"), is a business entity incorporated under the laws of Canada, having a principal place of business at #326, 125A-1030 Denman Street, Vancouver, BC V6G 2M6.

4. Upon information and belief, Defendant Monika Burton ("Burton") is the president of Burton International and an individual residing at #326, 125A-1030 Denman Street,

Vancouver, BC V6G 2M6.

JURISDICTION

5. This is an action for patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 271 and 282-85.

6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1332 and 1338(a).

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, Defendants have engaged in the distribution, offer for sale, or both, of products embodying the inventions of United States Patent Nos. 6,488,034 and 6,694,988 in this judicial district and throughout the United States.

BACKGROUND

8. J. Blazek is engaged in the business of making and selling glass nail files to customers around the world in numerous shapes and sizes.

9. On December 3, 2002, United States Patent No. 6,488,034 ("the '034 patent") entitled FILE, PARTICULARLY NAIL FILE, was duly and legally issued by the United States Patent and Trademark Office ("USPTO"). (Exhibit A.) Mr. Dalibor Blazek is the owner of all right, title, and interest in the '034 patent. J. Blazek is the exclusive licensee of the '034 patent.

10. On February 24, 2004, United States Patent No. 6,694,988 ("the '988 patent") entitled FILE, PARTICULARLY NAIL FILE, was duly and legally issued by the USPTO. (Exhibit B.) Mr. Dalibor Blazek is the owner of all right, title, and interest in the '988 patent. J. Blazek is the exclusive licensee of the '988 patent.

11. Defendants are engaged, *inter alia*, in the business of making and/or selling glass nail files. Defendants have purposefully imported, sold and offered for sale such glass nail files throughout the United States.

12. Upon information and belief, Defendant Burton International is directly engaged in the sale of infringing products as alleged herein. Defendant Burton conducts business online at www.crystalfiles.com.

13. Defendant Burton uses the name Burton International as an alias to operate her business. Upon information and belief, Burton is an officer or principal of Burton International. Upon information and belief, Defendant Burton is directly engaged in the sale of infringing products as alleged herein.

14. Defendants Burton International and Burton were put on actual notice of their infringing activities on October 12, 2007, November 15, 2007, and April 3, 2008, via letter from Plaintiffs. Plaintiffs also mark their glass nail files with at least the '988 patent.

15. Plaintiffs have expended a substantial amount of money and effort in making and selling its patented glass nail files. Defendants' business of making and selling glass nail files is in violation of Plaintiffs' patent rights.

COUNT I – INFRINGEMENT OF U.S. PAT. NO. 6,488,034

16. Plaintiffs restate the allegations set forth in paragraphs 1-15 and incorporate them herein by reference.

17. By virtue of his ownership of the '034 patent, Plaintiff Mr. Dalibor Blazek maintains the right to sue thereon and the right to recover for infringement thereof.

18. As exclusive licensee of the '034 patent, Plaintiff J. Blazek maintains the right to sue thereon and the right to recover for infringement thereof.

19. On information and belief, Defendants have directly infringed, contributed to the infringement of, and/or induced infringement of the '034 patent through the manufacture, use, sale, offer for sale, and or importation of certain glass nail files.

20. Upon information and belief, Defendants have had actual knowledge of the '034

patent and their infringement of this patent and has been and continues to be willful and deliberate.

21. Plaintiffs have been damaged by Defendants' infringement of the '034 patent and will continue to be damaged in the future unless Defendants are permanently enjoined from infringing the '034 patent, contributing to the infringement of the '034 patent, and/or inducing the infringement of the '034 patent by others.

22. Plaintiffs have satisfied the notice provisions of 35 U.S.C. § 287.

COUNT II – INFRINGEMENT OF U.S. PAT. NO. 6,694,988

23. Plaintiffs restate the allegations set forth in paragraphs 1-22 and incorporate them herein by reference.

24. By virtue of his ownership of the '988 patent, Plaintiff Mr. Dalibor Blazek maintains the right to sue thereon and the right to recover for infringement thereof.

25. As exclusive licensee of the '988 patent, Plaintiff J. Blazek maintains the right to sue thereon and the right to recover for infringement thereof.

26. On information and belief, Defendants have directly infringed, contributed to the infringement of, and/or induced infringement of the '988 patent through the manufacture, use, sale, offer for sale, and or importation of certain glass nail files.

27. Upon information and belief, Defendants have had actual knowledge of the '988 patent and their infringement of this patent and has been and continues to be willful and deliberate.

28. Plaintiffs have been damaged by Defendants' infringement of the '988 patent and will continue to be damaged in the future unless Defendants are permanently enjoined from infringing the '988 patent, contributing to the infringement of the '988 patent, and/or inducing

the infringement of the '988 patent by others.

29. Plaintiffs have satisfied the notice provisions of 35 U.S.C. § 287.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment that:

A. Defendants have directly infringed, contributorily infringed, and/or induced infringement of one or more claims of the '034 patent;

B. Defendants have directly infringed, contributorily infringed, and/or induced infringement of one or more claims of the '988 patent;

C. Defendants have willfully infringed one or more claims of the '034 patent;

D. Defendants have willfully infringed one or more claims of the '988 patent;

E. Defendants, their officers, agents, servants and employees, and those persons in active concert or participation with any of them be enjoined from further infringing, contributing to the infringement, or inducing the infringement of the '034 patent;

F. Defendants, their officers, agents, servants and employees, and those persons in active concert or participation with any of them be enjoined from further infringing, contributing to the infringement, or inducing the infringement of the '988 patent;

G. An accounting be had for the damages arising out of Defendants' infringement of the '034 patent, including treble damages for willful infringement as provided by 35 U.S.C. § 284, with interest;

H. An accounting be had for the damages arising out of Defendants' infringement of the '988 patent, including treble damages for willful infringement as provided by 35 U.S.C. § 284, with interest;

I. Plaintiffs be awarded their attorneys' fees, costs, and expenses in this action; and

J. Plaintiffs be awarded such other and further relief as this Court may deem

necessary and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted,

**J. BLAZEK SKLO PODEBRADY S.R.O. and
MR. DALIBOR BLAZEK,
Plaintiffs**

By its attorneys,

Dated: June 16, 2008

s/Heather J. Kliebenstein
Anthony R. Zeuli (MN # 274884)
Thomas R. Johnson (MN # 242032)
Heather J. Kliebenstein (MN # 337419)
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Facsimile: (612) 332-9081

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM).

I (a) PLAINTIFFS

J. Blazek SKLO Podebrady s.r.o. and Mr. Dalibor Blazek

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Burton International Enterprises and Monika Burton d/b/a Burton International Enterprises

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM, NAME, ADDRESS, AND TELEPHONE NUMBER)

Anthony R. Zeuli
Heather J. Kliebenstein
Merchant & Gould, P.C.
80 South Eighth St., Suite 3200
Minneapolis, MN 55402
Tele: 612.332.5300
Fax: 612.332.9081

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State PTF ☐ 1 DEF ☐ 1
Citizen of Another State ☐ 2 ☐ 2
Citizen or Subject of a Foreign Country ☒ 3 ☒ 3
Incorporated or Principal Place of Business in This State PTF ☐ 4 DEF ☐ 4
Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STAT'DIES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 620 Other Food & Drug		<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 630 Liquor Laws		<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 640 R.R. & Truck	PROPERTY RIGHTS	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 660 Occupational Safety/Health	<input checked="" type="checkbox"/> 830 Patent	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract			LABOR	SOCIAL SECURITY		<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)		<input type="checkbox"/> 892 Economic Stabilization Act
	REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)		<input type="checkbox"/> 893 Environmental Matters
	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 D/WC/DWW (405(g))		<input type="checkbox"/> 894 Energy Allocation Act
	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI		<input type="checkbox"/> 895 Freedom of Information Act
	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		FEDERAL TAX SUITS	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff of Defendant)	<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
		PRISONER PETITIONS				
		<input type="checkbox"/> 510 Motions to vacate Sentence				
		HABEAS CORPUS:				
		<input type="checkbox"/> 530 General				
		<input type="checkbox"/> 535 Death Penalty				
		<input type="checkbox"/> 540 Mandamus & Other				
		<input type="checkbox"/> 550 Civil Rights				
		<input type="checkbox"/> 555 Prison Condition				

V. ORIGIN

(PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify) _____
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

This is an action for patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 271 and 282-85.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION

DEMAND \$

Check YES only if demanded in Complaint:

☐ UNDER F.R.C.P. 23

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

June 16, 2008 s/Heather J. Kliebenstein

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RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____